

**HAMPTON ZONING BOARD OF ADJUSTMENT
MINUTES
July 17, 2014**

Members Present

Bryan Provencal, Chairman
Bill O'Brien, Vice Chairman
Norma Collins, Clerk
Tom McGuirk
Ed St. Pierre
Matt Shaw (Alternate)

Others Present

Kevin Schultz, Building Inspector
Joan Rice, Secretary

Chairman Provencal called the meeting to order at 7:00 p.m.

The Pledge of Allegiance was said.

Board members were introduced.

PETITION SESSION

Chairman Provencal said there had been requests for postponement for Petitions 31-14 and 36-14.

Mr. O'Brien said he would like to have a discussion on Petition 31-14 which was for an appeal of a Planning Board decision for property located at 1042 Ocean Blvd.

Mr. O'Brien asked Attorney Soloman, representing Ms. Theodoros, when he had been retained as counsel. Attorney Soloman replied that he had been retained that afternoon and would like additional time to prepare.

Mr. O'Brien said he was prepared to hear this petition at this meeting. Late retainment of counsel is not his responsibility. Mr. McGuirk agreed with Mr. O'Brien. Mr. McGuirk said there is a right for counsel, but it must be done in a timely fashion. Chairman Provencal said he agreed. Mr. St. Pierre also agreed.

Moved by Mr. McGuirk, seconded by Mr. O'Brien, to deny the request for postponement for Petition 31-14.

Vote: 4 yes, 1 no (Collins). Motion passed.

Moved by Mr. O'Brien, seconded by Mr. St. Pierre, to postpone the hearing of Petition 36-14 until the August 21, 2014 meeting

Vote: 5 yes, 0 no. Motion passed unanimously.

At this time Mr. McGuirk stepped down from the Board and Mr. Shaw stepped up to the Board.

28-14...The petition of Patrick & Donna Giangregorio for property located at 83 Ocean Blvd. for an Appeal from an Administrative Decision made on May 1, 2014 to grant a permit to allow construction on property without the owners' approval. This property is located on Map 2909, Lot 146 and in the BS Zone.

Attorney John Cronin came forward. He said he was here on behalf of the applicant. The Giangregorios are unit owners in these condos. They feel they were duped. In 2012 when they put their money down there was a public offering statement. There was no mention of cell towers, etc. A public offering statement has great significance. All encumbrances must be listed and this includes telecommunications equipment. The developer and seller of these units kept this a secret. They recorded some amendments with the Register of Deeds. This should have been presented to the Attorney General. This did not happen. The amendments were not approved by the Attorney General. Attorney Cronin said he felt the Zoning Board is obligated to get involved.

Attorney Cronin said this should be sent back to Mr. Schultz with the statement that there is a discrepancy with this application.

Questions from the Board

Mr. O'Brien said Mr. Schultz's staff does not have the time to look into all of these activities.

Attorney Sharon Somers, representing Mr. Schultz, said she had prepared and presented to the Board a packet of information. She said this is an appeal of administrative decision. Whether or not the property on which the permit was issued is owned by Portman Investments LLC, her position is that the building permit was not issued in error. Documents indicating that Portman owns the property were sufficient for Mr. Schultz to act. The Building Inspector makes a decision on documents presented to him. Attorney Somers said she feels this constitutes a civil dispute. It is not Mr. Schultz's job to get involved. In this instance there is no error. There is no basis to turn down the permit as it is. Mr. Schultz will honor the outcome of any future action.

Chairman Provencal said he felt this (condo documents) was not in the jurisdiction of the Zoning Board and he did not feel Mr. Schultz made any error.

Mr. St. Pierre asked if the outside of the building was common area. Attorney Somers said it was. Mr. St. Pierre asked if there is any work requested on this permit outside of the area that is only common to unit 108. Attorney Somers said there was not.

Mr. O'Brien then asked the Building Inspector if the permit he granted was restricted to Unit 108 and the limited common area associated with Unit 108 such as roof area and conduits between those areas. Mr. Schultz said that was all he permitted and there is no generator.

Attorney Cronin said approval was not obtained from the Attorney General and the amendments did not follow the requirements of RSA 352B. The amendments were not legal.

Comments from the Audience

Heather Deislin, member of the Board of Directors and President of the condo association, came forward. She said she filed an official complaint with the Attorney General on her behalf and was now expanding it to the broader community. The Attorney General is interested and reviewing and does have the power.

Attorney Brian Grossman, representing AT&T, came forward. He said the Board has an obligation and legal duty to not become involved. The Zoning Board has no jurisdiction. This is a private dispute, not a zoning dispute. If the parties do not resolve it, it must be adjudicated.

Back to the Board

Mr. St. Pierre said this was to appeal an administrative decision made by the Building Inspector and the Board does have jurisdiction.

Mr. Provencal stated that Mr. Schultz did not make an error in granting the permit.

After nearly an hour's discussion, Mr. O'Brien stated that the decision of the Building Inspector, with the information he had relative to the building permits, was proper and moved to deny the appeal.

Mr. St. Pierre seconded the motion and stated that there was no work to be performed outside the limited common area or the unit

Mr. Shaw said this was a "dispute" (word from lawyers) whether documents are good or not...so the Building Inspector did not err.

Moved by Mr. O'Brien, seconded by Mr. St. Pierre, to deny the appeal presented in Petition 28-14.

Vote: 5 yes, 0 no. Motion passed unanimously.

At this time Mr. McGuirk stepped back up to the Board and Mr. Shaw stepped down.

29-14...The Petition of Miramar Guest House, LLC for property located at 9 Nudd Ave. seeking relief from Article(s) 4.4.1, 4.5.1, 4.5.2, 6.4.2 to renovate an existing rooming house/multi-family structure into a 3 dwelling unit property. This property is located on Map 282, Lot 39 and in the BS Zone.

Attorney Craig Soloman and Richard Jones, Manager of the LLC, came forward. Attorney Soloman said this proposal is to renovate this home. It is consistent with historical use. It was formerly a rooming house. The proposal is to remove the building in the back and the little addition on the back. They also want to gut the inside of the house and redo it. The unit on the first floor would be accessed from the front of the building and the two units on the second and third floors would be accessed from the parking area. A variance is needed for a parking spot that is smaller than previously thought. It would be restricted to motorcycles and compact cars. Attorney Soloman went through the five criteria and said he felt they had been met.

Questions from the Board

Mr. O'Brien said his only concern was the front stairs. There is no way to put six stairs into 3-1/2 feet. Attorney Soloman replied that the stairs would be built into the porch.

Ms. Collins asked about the increase in permeable surface. Attorney Soloman explained how this increase would be obtained.

Comments from the Audience

John Regan, 11 and 11A Nudd Ave., said he believed the project was beneficial. He urged the Board to grant the petition.

Back to the Board

Mr. St. Pierre said he felt three units was a stretch for this building. Mr. O'Brien said he saw no problem. Chairman Provencal said it would fit into the character of the neighborhood.

Moved by Mr. O'Brien, seconded by Mr. McGuirk, to grant Petition 29-14 with the condition that one parking space be 7-1/2 feet wide and that the front stairs be no closer than 1/2 foot from the property line.

Chairman Provencal asked the Board if they felt the five criteria had been met. All members agreed that they had.

Vote: 5 yes, 0 no. Motion passed unanimously.

30-14...The Petition of Atlantic Breeze Suites, Lynne M. Bernier, Michael A. & Patricia Serafino and Walter C. Lee III for property located at 429 Ocean Blvd. seeking relief from Article(s) 4.1.1 and 6.3.1 to convert an existing 15-unit building from condominium ownership as a hotel to multi-family condominium ownership where the latter ownership requires relief from lot area and parking. This property is located on Map 116, Lot 12 and in the RA Zone.

Attorney Peter Saari, Casassa & Ryan, and Peter Roy came forward. Attorney Saari said this change is pretty much a paper change. Everything would stay the same. The only change is that the owners would have the right to put in amenities. Attorney Saari went through the five criteria and said he felt they had been met.

Questions from the Board

Mr. St. Pierre asked if there were any year-round residents. Mr. Roy said there were not. Mr. O'Brien said now two parking spaces per unit will be required and he was fearful of the ripple effect in the town. Mr. McGuirk said this change would make the units more marketable. Mr. St. Pierre said a multi-family condo would have more visitors.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Mr. St. Pierre said the only way he could see this would be if the units were reconfigured to make them bigger. Mr. O'Brien said he was not in favor of granting this petition.

Moved by Mr. St. Pierre, seconded by Mr. O'Brien, to deny Petition 30-14.

Chairman Provencal asked the Board if they felt the five criteria had been met. Mr. St. Pierre, Ms. Collins and Mr. O'Brien said they had not. Chairman Provencal and Mr. McGuirk said they would abstain.

Vote: 3 yes, 0 no, 2 abstentions (Provencal, McGuirk). Motion passed.

31-14...The Petition of Karin Theodoros for an Appeal of Decision of Town of Hampton Planning Board for property located at 1042 Ocean Blvd. This property is located on Map 116, Lot 12 and in the RA Zone.

Attorney Steve Roberts and Attorney Craig Soloman came forward. Attorney Roberts said the issue is the retaining wall which was approved by the Planning Board. There was a special use permit. Ms. Theodoros filed an appeal and he does not feel she has the right to sue. She has never participated in the legislative process. The next question is whether or not the Zoning Board has jurisdiction on special use permits. Attorney Roberts cited 676:5 which says RSA 674:21 delegates administration, including the granting of conditional or special use permits to the Planning Board and the Planning Board's decision made pursuant to that delegation cannot be appealed to the Board of Adjustment, but may be appealed to the superior court.

Attorney Soloman said Ms. Theodoros did participate. He referenced Minutes of May 1, 2013. She never received a letter from the Planner on how to proceed.

Attorney Wanda Robertson, Assistant Town Counsel, said she did not think this Board has jurisdiction. The appeal has to do with a special use permit

Back to the Board

Chairman Provencal, Mr. McGuirk and Mr. St. Pierre all agreed that the Zoning Board does not have jurisdiction in this case.

Moved by Mr. O'Brien, seconded by Mr. St. Pierre, to not take any action on this Petition pursuant to 676:5, paragraph III, which delegates special use permits to the Planning Board and says no appeals can go to the Zoning Board of Adjustment and must go to the superior court.

Vote: 5 yes, 0 no. Motion passed unanimously.

32-14...The Petition of The Surf Condominium & Retail of Hampton, LLC and Happy Hampton, Inc. & Raymond Blondeau for property located at 253 and 275 Ocean Blvd. seeking relief from Article 11.5a to place a temporary wheeled construction/sales trailer upon the property initially for the purpose of generating interest and sales for the project before and during construction and as a construction headquarters during construction. This property is located on Map 282, Lots 108 & 87-01 and in the BS Zone.

Michael Green and Attorney Stephen Ells came forward. Attorney Ells said they were seeking permission to have a temporary construction/sales trailer. Mr. Blondeau would allow this on his property. 11.5a is the requirement for a permanent foundation. Attorney Ells went through the five criteria and said he felt they had been met.

Questions from the Board

Mr. St. Pierre said in previous grantings of like petitions, the trailer was on the property itself. This is on another property. Mr. St. Pierre said he wondered how this Board could force removal.

Attorney Ells said a time limit could be imposed. Mr. O'Brien said he would recommend consulting with legal counsel.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Chairman Provencal said this could be done only with stipulations. Mr. O'Brien said he would not vote because he did not believe the Board could do this.

Moved by Mr. St. Pierre, seconded by Mr. McGuirk, to grant Petition 32-14 with the stipulation that it be specific for the marketing of 275 Ocean Blvd. and no other goods, services or wares are to be sold out of that location.

Chairman Provencal asked the Board if they felt the five criteria had been met. Chairman Provencal, Mr. St. Pierre and Mr. McGuirk said that they had. Mr. O'Brien and Ms. Collins said they would abstain.

Vote: 3 yes, 0 no, 2 abstentions (Collins, O'Brien). Motion passed.

33-14...The Petition of Stephen & Ruth D'Urso and Angela Caulfield for property located at 11 and 13 Dover Ave. seeking relief from Article(s) 4.1.1, 4.5.3 to demolish the existing building at 11 Dover Avenue and construct a new single family home, the eaves of which will be 7 feet from the rear property line to comply with the Deed restrictions, which building would be in addition to the other single family home on the property at 13 Dover Ave. This property is located on Map 296, Lots 135-1 & 135-2 and in the RB Zone.

Angela Caulfield and Attorney Peter Saari came forward. Attorney Saari said this lot currently has two single family homes. The issue here is Ms. Caulfield's home. The present one is very small. She has decided the best thing to do is to tear down the present home and start over again. Attorney Saari went through the five criteria and said he felt they had been met.

Questions from the Board

There were no questions from the Board.

Comments from the Audience

Jim Walsh, 18 Dover Ave., said he was fully in favor of granting this Petition.

Back to the Board

Moved by Mr. O'Brien, seconded by Ms. Collins, to grant Petition 33-14 provided the structure is not closer than 7 feet to the lot line.

Chairman Provencal asked the Board if the five criteria had been met. All members agreed that they had.

Vote: 5 yes, 0 no. Motion passed unanimously.

34-13...The Petition of Roy T. and Joyce L. Peterson for property located at 139 Mill rd. seeking relief from Article(s) 2.5.4 (A), 4.2 (including FN 22) and 4.3 to subdivide an existing house lot containing just under an acre of land into 2 lots, one just under, and the other just over, a half acre, one with an existing single-family residence and the other with a proposed family residence, requiring aquifer area, frontage and lot width variances, both lots serviced by a common driveway entrance. This property is located on Map 127, Lot 57 and in the RA Zone.

Attorney Peter Saari said when they presented a plan last month there was a concern about the common driveway. There is now a new plan wherein there will be one driveway entrance but each driveway will branch off by itself. On this new plan the lot line was angled a little bit and there was a small increase in frontage. Attorney Saari went through the five criteria and said he felt they had been met.

Questions from the Board

Mr. St. Pierre said the spacing of the driveways now works. Mr. O'Brien said his issue is the deed restriction. He said he would rather see a fence or trees. Mr. McGuirk said he was not

in favor of deed restrictions. Ms. Collins said she thought every concern the Board had last month has been addressed.

Comments from the Audience

Mark Morner, 135 Mill Road, said he felt the value of the property would drop and he is still concerned about flooding.

Jane Abbott said she was concerned about property values.

Back to the Board

Moved by Ms. Collins, seconded by Mr. McGuirk, to grant Petition 34-13 with the stipulation that the deed restriction be removed.

Chairman Provencal asked the Board if they felt the five criteria had been met. All members agreed that they had.

Vote: 5 yes, 0 no. Motion passed unanimously.

35-14...The Petition of Joseph & Julie Defelice for property located at 21 Gate Gate Drive seeking relief from Article 4, 4.5.2 to change direction of existing exterior stairway and in doing so, add 4' additional decking toward property line. Proposed project would be inside of resident's fenced yard. This property is located on Map 78, Lot 4 and in the RA Zone.

Ms. Defelice said they are asking to change the direction of the stairs to make them more functional. Ms. Defelice went through the five criteria and said she felt they had been met.

Questions from the Board

There were no questions from the Board.

Comments from the Audience

There were no comments from the Audience.

Back to the Board

Moved by Mr. McGuirk, seconded by Ms. Collins to grant Petition 35-14.

Chairman Provencal asked the Board if they felt the five criteria had been met. All members agreed that they had.

Vote: 5 yes, 0 no. Motion passed unanimously.

37-14...The Petition of Peter D. & Mandaleen L. Ross for property located at 91 Leavitt Rd. seeking relief from Article 4.5.1 for a maximum garage face encroachment of 3 1/3 feet, and 7 more inches for the outermost edge of the eaves into the front setback. This property is located on Map 205, Lot 11A and in the RA Zone.

Peter Ross and Attorney Peter Saari came forward. Attorney Saari presented a revised plan addressing the concerns of the Board from last month.

Questions from the Board

Mr. O'Brien said he would go along with the equitable waiver if on Lot 2 the four corners are pinned before proceeding.

Comments from the Audience

Diane Tolarino, 91 Leavitt Rd., said she was in favor of granting the petition.

Attorney Saari present four letters from neighbors in support.

Back to the Board

Moved by Mr. O'Brien, seconded by Mr. St. Pierre, to grant the equitable waiver for Petition 37-14 on the condition that the corner setbacks will be pinned on Lot 2 within 30 days.

Chairman Provencal asked the Board if they felt the four criteria had been met. All members agreed that they had.

Vote: 5 yes, 0 no. Motion passed unanimously.

BUSINESS SESSION

Approval of Minutes

Moved by Mr. St. Pierre, seconded by Mr. O'Brien, to approve the Minutes of June 19, 2014 as amended.

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Vote: 5 yes, 0 no. Motion passed unanimously.

The Minutes of the Special Meeting of June 12, 2014 will be reviewed at the next meeting.

Adjournment

Moved by Mr. St. Pierre, seconded by Chairman Provencal, to adjourn the meeting at 10:37 p.m.

Respectfully submitted,

Joan Rice
Secretary